

REMARKS

Applicant submits that the present amendment is fully responsive to the Office Action dated October 29, 2008 and, thus, the application is in condition for allowance.

By this reply, claims 1, 6, 9 and 14 are amended. Claims 1-14 remain pending; claims 15-17 remain withdrawn at this time. Of these, claim 1, 6, 9 and 14 are independent. An expedited review and allowance of the application is respectfully requested.

In the outstanding Office Action, claims 9-13 were rejected under 35 U.S.C. § 101 because it is alleged that the claimed invention is directed to non-statutory subject matter. It is asserted that the language of the claims is directed to an abstract idea not tied to a technological art, environment or machine to produce a concrete, useful and tangible result. While one having ordinary skill in the art would clearly understand that the claims of question relate to tangible matter having a useful result, in order to expedite prosecution, Applicant has amended claim 9 to more clearly recite the invention. Withdrawal of the rejection is respectfully requested.

In the outstanding Office Action, claim 1 was rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement. It is asserted that a previous amendment added new subject matter. Though not necessarily agreeing with the assertions in the Office Action, in order to expedite the prosecution, Applicant has amended the claim to remove the offensive language. Thus, the rejection should now be withdrawn.

In the outstanding Office Action, claims 1-4 and 6-14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Genell et al. (6,122,505) in view of Kiukkonen (2004/0203466). It is asserted that Genell discloses substantially a method and system according to the present invention as recited in the claims, but for teaching calculating a bit-error rate by comparing the condition of the receiver and determining receiver performance by evaluating the

predetermined attenuation. It is further alleged that Kiukkonen does disclose this deficiency and the combination of these cited references would have therefore been obvious to one having ordinary skill in the art. Applicant respectfully traverses.

Neither Genell nor Kiukkonen, nor any other related art of record, alone or in combination, disclose or fairly suggest the present invention as recited in the pending claims. For example, Genell fails to teach or suggest transmitting from the transmitter a signal bearing a predetermined message at a predetermined attenuation followed by automatically transmitting the signal at a second predetermined attenuation. This is disclosed, for instance, in paragraph [0055] of the present invention. Genell discloses using system resources to test base stations. However, Genell never even discusses predetermined attenuation levels. Therefore, it is not possible for Genell to disclose or suggest automatically switching from a predetermined attenuation level to a second predetermined attenuation level. This automatic switching found in the present invention allows testing procedures to automatically run at multiple attenuation levels.

Furthermore, Kiukkonen fails to cure the deficiencies of Genell because Kiukkonen also fails to teach or suggest transmitting from the transmitter a signal bearing a predetermined message at a predetermined attenuation followed by automatically transmitting the signal at a second predetermined attenuation. At best, Kiukkonen discloses calculating the bit-rate error of a signal (Paragraph [0026]). Automatically switching from a predetermined attenuation level to a second predetermined attenuation level is not disclosed at all. As stated above, this allows the present invention to automatically run testing procedures at multiple attenuation levels. Therefore, the combination of Genell and Kiukkonen does not render the present invention

obvious. For at least this reason, Applicant respectfully requests that this rejection be withdrawn.

In addition, even if presumed that Genell does disclose the limitations as alleged by the Examiner, *arguendo*, it would not have been obvious to one of ordinary skill in the art to combine the disclosures of Kiukkonen and Genell to arrive at the invention as claimed because Kiukkonen teaches away from such a combination. Kiukkonen discloses that it is advantageous *not* to generate a predetermined test message. See Kiukkonen, paragraph 11. However, as claimed, the present invention discloses transmitting a predetermined message. Since Kiukkonen teaches away from transmitting a predetermined message, it would not have been obvious to one of ordinary skill in the art to combine the disclosures of Kiukkonen and Genell to obtain the present invention.

Thus, neither Genell nor Kiukkonen, alone or in combination, teach all of the elements in the independent claims. Hence, the dependent claims, which depend therefrom, also are patentably distinct from any prior art of record. For this reason, Applicant respectfully requests withdrawal of the rejection. Furthermore, there is no motivation to combine any of these references outside of Applicant's own disclosure. Even if they were combinable, *arguendo*, the combination would not be able to obviate the present invention for at least the reasons set forth above. Thus, the rejection of the claims should be withdrawn.

In the outstanding Office Action, claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Genell in view of Kiukkonen and further in view of Kikuchi (4,709,403). It is asserted that the combination of Genell and Kiukkonen discloses a method with all of the limitations of the present invention as recited in the claims, but for increasing the magnitude of the predetermined attenuation until the communication link is dropped. It is alleged that Kikuchi

does disclose this deficiency and the combination of these cited references would have therefore been obvious to one having ordinary skill in the art. Applicant respectfully traverses.

Neither Genell nor Kiukkonen nor Kikuchi, nor any other related art of record, alone or in combination, disclose or fairly suggest the present invention as recited in the pending claims. At most, Kikuchi discloses an apparatus for controlling the output power of a transmitter that is installed in a vehicle or used in a mobile radio communication equipment (Abs.). However, Kikuchi is being used to address a dependent claim and in no way cures the deficiencies set forth above with respect to independent claim 1. Therefore, claim 5 should be allowed for at least the same reasons set forth above. For this reason, Applicant respectfully requests withdrawal of the rejection. Furthermore, there is no motivation to combine any of these references outside of Applicant's own disclosure. Even if they were combinable, *arguendo*, the combination would not be able to obviate the present invention for at least the reasons set forth above. Thus, the rejection of the claims should be withdrawn.

No extension of time is believed to be necessary to enter this amendment. If any other fees are associated with the entering and consideration of this amendment, please charge such fees to our Deposit Account 50-2882.

Applicant respectfully requests an interview with the Examiner to present more evidence of the unique attributes of the present invention in person. As all of the outstanding rejections have been traversed and all of the claims are believed to be in condition for allowance, Applicant respectfully requests issuance of a Notice of Allowance. If the undersigned attorney can assist in any matters regarding examination of this application, Examiner is encouraged to call at the number listed below.

Respectfully submitted,

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